IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 19TH MARCH 2007 /]8TH PHALGUNA 1928

M.F.A.No.729 of 2001

W.C.C.NO.53/1998 OF THE COURT OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER) THRISSUR.

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APPELLANT/2ND OPPOSITE PARTY:-

THE ORIENTAL INSURANCE CO. LTD., CHALAKUDY,
NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, METRO PALACE, KOCHI-18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENT/APPLICANT:-

RAVEENDRAN, S/O.RAJAPPAN, PEDIKATTUPARAMBIL HOUSE,
IRINJALAKUDA P.O., MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.729 of 2001

Dated, this the 19th day of March, 2007

JUDGMENT

2nd Opposite Party - the Oriental Insurance Co. Ltd. - in W.C.C.No.53 of 1993 is the appellant. The respondent was an employee of one Smt.K.P.Annie. He was working as Cleaner in tanker lorry bearing registration No.KEE 2068 owned by Smt.K.P.Annie. While the respondent was working as Cleaner, the vehicle met with an accident near Nagarcoil and he sustained injuries. He was admitted in the Government Hospital at Nagarcoil from 12.3.1994 to 16.3.1994. Subsequently he was admitted in St.James Hospital, Chalakudy on 17.3.1994 and treated as inpatient till 20.4.1994. The respondent filed a petition claiming compensation alleging that he was getting a monthly wage of Rs.3,000/- and he was aged 35 years at the time of accident and he is entitled to get a compensation of Rs.2,36,472/-.

2. The following are the injuries:

"(1) Lacerated wound over the left side of cheek 3x1.5x1cm.

(2) Lacerated wound over the left side of chest 4x1x1cm.

(3) Crust injury right foot with traumatic amputation

right great toe and 2nd toe.

(4) Undisplaced colles' fracture left wrist".

The Tribunal found that the accident occurred during the course and out of employment and the respondent is entitled to get compensation under the Workmen's Compensation Act. It also found that there is loss of earning capacity at 80% and awarded a compensation of Rs.76,856/-. Challenging that order, this appeal is filed.

3. The evidence on record shows that the respondent was an employee of Smt.K.P.Annie. He was working as Cleaner in a tanker lorry bearing registration No.KEE 2068 belonging to the said Smt.Annie. He sustained injuries during the course and out of employment. So, the finding of the Commissioner for Workmen's Compensation that the respondent is entitled to compensation is perfectly correct and does not call for any interference.

4. The main dispute is regarding the quantum of compensation. Learned counsel appearing for the appellant has argued that the injury sustained by the respondent is a scheduled one and as per schedule, the disability is 17% and hence the

Commissioner for Workmen's Compensation went wrong in fixing disability at 80%.

5. The learned counsel appearing for the respondent has strenuously argued before me that there is absolutely no merit in this appeal and the medical evidence produced by the respondent would prove that the respondent sustained not only scheduled injury, but very serious unscheduled injuries which totally incapacitated the respondent to do any work. It is contended that in fact the Workmen's Compensation Court ought to have fixed it as a total case of disablement and granted maximum compensation. It is also submitted that Exhibit A5 is a Disability Certificate issued by Assistant Professor of Orthopaedics attached to Medical College Hospital, Thrissur and the authority below had relied on that.

6. The fact that the respondent sustained amputation of right great toe and 2nd toe is admitted. It is a scheduled injury. The disability is 17%. But, in addition to that injury, the respondent sustained undisplaced fracture to left wrist and lacerated injury on the chest. The question to be considered is whether the permanent disability assessed by the doctor at 30%

is sufficient to arrive at a conclusion that the loss of earning capacity is 80%. The materials on record show that the appellant filed a petition to direct the respondent to appear before a Medical Board for assessment of the correct disability. The authority below had dismissed that application on the ground that the certificate produced by the respondent from the Medical Practitioner is sufficient to decide the matter. According to me, in the facts and circumstances of the case the authority below ought to have given one opportunity to the Insurer to adduce evidence. The prayer to direct the respondent to appear for an examination before the Medical Board to assess the disability ought to have been allowed. I make it clear that in view of the Medical Certificate produced by the respondent, the burden is on the Insurer to prove that the certificate produced by the applicant is wrong. If the Insurer wants to assess the disability of the respondent, the expenses, if any, shall be met by the Insurer for medical examination of the respondent.

In the result, the appeal is allowed. The impugned order is set aside. The matter is remanded to the authority below for fresh disposal in accordance with law. The authority below

shall make every endeavour to dispose of the claim petition as expeditiously as possible. It is made clear that the amount of compensation, if any, withdrawn by the respondent from the amount deposited need not be redeposited and that amount shall be adjusted towards the compensation to be fixed in the case. C.M.P.No.6090 of 2001 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-